

Noelle E. Dwarzski, WSBA No. 40041
McKENZIE ROTHWELL BARLOW
& COUGHRAN, P.S.
1325 Fourth Ave Suite 910
Seattle, WA 98101
Telephone: (206) 224-9900
Facsimile: (206) 224-9820
E-mail: noelled@mrbclaw.com

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BOARDS OF TRUSTEES OF THE
CEMENT MASONS & PLASTERERS
HEALTH & WELFARE TRUST,
CEMENT MASONS AND
PLASTERERS RETIREMENT TRUST,
WESTERN WASHINGTON CEMENT
MASONS JOURNEYMAN AND
APPRENTICE TRAINING TRUST, and
WASHINGTON CONSTRUCTION
INDUSTRY SUBSTANCE ABUSE
PROGRAM FUNDS (hereafter referred
to as the Trust Funds),

Plaintiffs,

v.

KELAYE CONCRETE LLC, a
Washington limited liability company,
UBI No. 603213162, Contractor's
License No. KELAYCL876K2,

Defendant.

NO.

**COMPLAINT TO ENFORCE TERMS
OF TRUST AGREEMENTS –
DEMAND FOR AUDIT OF PAYROLL
RECORDS AND FOR DELINQUENT
FRINGE BENEFIT CONTRIBUTIONS
(ERISA)**

For their complaint, plaintiffs allege as follows:

I. PARTIES AND JURISDICTION

1. Plaintiffs are the Boards of Trustees of the Cement Masons & Plasterers Health & Welfare Trust, Cement Masons and Plasterers Retirement Trust, Western Washington Cement Masons Journeyman and Apprentice Training Trust, and Washington Construction Industry Substance Abuse Program Funds (collectively “Trust Funds”).

2. Trust Funds are joint labor-management funds created pursuant to Section 302(c) of the Labor Management Relations Act (“LMRA”), 29 U.S.C. § 186(c), and the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1001, *et seq.* as amended (“ERISA”).

3. Defendant Kelaye Concrete LLC (hereafter “Kelaye”), is a Washington limited liability company engaged in business in the states of Washington and Oregon having its principal offices at 10742 SE Highway 212, Clackamas, Oregon 97015-9144.

4. Jurisdiction is conferred on this court by Section 502 of ERISA, 29 U.S.C. § 1132.

5. Venue is appropriate in the Division of Seattle, King County, WA under ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

II. CLAIM FOR RELIEF: DEMAND FOR AUDIT OF PAYROLL RECORDS

6. At all material times, Kelaye has been signatory to a collective bargaining agreement (“CBA”) with Operative Plasterers’ and Cement Masons’ International Association, Cement Masons’ Local 528 (hereafter referred to as “Local 528”), which incorporates by reference the Trust Agreements for the Trust Funds.

1 7. Rebekah Williams, President of Kelaye, was authorized to legally bind and
2 sign contracts on behalf of the Kelaye and signed Compliance Agreements to the CBA with
3 Local 528 on March 24, 2015 and May 15, 2015.

4 8. The CBA incorporates the terms and conditions of the Trust Agreements
5 governing the plaintiff Trust Funds.

6 9. Kelaye's CBA and incorporated Trust Agreements authorize the Trusts to audit
7 contributing employers' books and records.

8 10. The Trust Funds have requested from Kelaye the documents and payroll
9 records necessary to complete an audit of its books and records for the period of March 2015
10 through the present date.

11 11. As of the date of this Complaint, Kelaye has refused to provide the documents
12 and payroll records necessary to complete an audit of its books and records for the period of
13 March 2015 through the present date.

14 12. ERISA permits a fiduciary to bring suit to bring redress violations of the Trust
15 Agreement or enforce provisions of the Trust Agreement. ERISA § 502(a)(3), 29 U.S.C.
16 § 1132(a)(3).

17 13. Pursuant to ERISA and the Trust Agreements, the Board of Trustees are
18 entitled to award from this court ordering Kelaye to turn over to the Trusts Funds the
19 documents and payroll records necessary to complete an audit of its books and records for the
20 period of March 2015 through the present date and otherwise comply with the payroll audit
21 provision of the Trust Agreements.
22

II. CLAIM FOR RELIEF: DELINQUENT CONTRIBUTIONS

14. Plaintiffs re-allege the facts set forth in paragraphs 1 through 13 above as if stated fully herein, and further allege as follows:

15. The CBA and Trust Agreements require Kelaye to make employee benefit contributions to Trust Funds on behalf of Kelaye's employees working within with the jurisdiction of the CBA.

16. At all material times, Kelaye has employed employees for whom employee benefit contributions are due pursuant to the terms of the CBA and Trust Agreements.

17. Kelaye has failed to timely make employee benefit contributions to Trust Funds for the delinquent period of March 2015 through current.

18. Kelaye owes an unknown amount in unpaid benefit contributions for the delinquent months of March 2015 through current. The total amounts due will be proven on motions or at trial.

19. Under the terms of the Trust Agreements and CBA, and under federal statutory law, Kelaye is obligated to pay liquidated damages, interest, reasonable attorney's fees, and costs and expenses of suit.

20. Kelaye also owes liquidated damages, interest, and attorney fees for the audit period of March 2015 through current. The total amount due will be proven on motions or at trial.

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1 WHEREFORE, Trust Funds pray for a money judgment as follows:

- 2 A. An order requiring Kelaye Concrete LLC to submit to an audit and provide
3 all the documents and payroll records necessary to complete an audit of its
4 books and records for the period of March 2015 through the present date;
- 5 B. Judgment against Kelaye Concrete LLC for all outstanding contributions,
6 liquidated damages, interest, found to be due and owing for the period of
7 March 2015 through current;
- 8 C. For reasonable attorneys' fees costs and expenses of suit; and
- 9 D. For such other and further relief as this court deems just and equitable.

10 DATED THIS 25th day of November, 2015.

11 s/ Noelle E. Dwarzski
12 Noelle E. Dwarzski, WSBA # 40041
13 McKENZIE ROTHWELL BARLOW
14 & COUGHRAN, P.S.
15 Attorneys for Plaintiff Trusts
16 1325 Fourth Ave., Suite 910
17 Seattle, WA 98101
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21
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